

SOUTHERN CALIFORNIA GAS CO.

IBLA 84-167

Decided June 27, 1984

Appeal from the decision of the California State Office, Bureau of Land Management, establishing rental charges for communication site right-of-way CA 8350.

Affirmed.

1. Appraisals -- Communication Sites -- Rights-of-Way: Generally

An appraisal of fair market rental for a communication site right-of-way will not be set aside on appeal if an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charges are excessive.

APPEARANCES: Don E. Young, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Southern California Gas Company has appealed from the November 8, 1983, decision of the California State Office, Bureau of Land Management (BLM), establishing \$6,000 as the fair market value for 1-year's rental of communication site right-of-way CA 8350. The right-of-way was granted on February 13, 1981, and the indicated rental was "\$2,000 annually, subject to adjustment by formal appraisal." Appellant contends that the increase to \$6,000 for the 1-year period beginning February 14, 1984, is excessive: "The rental increase from \$2,000 per year to \$6,000 per year amounts to a 200% increase. The validity of a formal appraisal which indicates a 200% rise in the fair market value in this time frame is questionable" (Statement of Reasons at 2).

Contrary to appellant's assertion, BLM's appraisal does not reflect "a 200% rise in the fair market value" because the initial rental of \$2,000 was not based on any appraisal of fair market value. Indeed, appellant's entire argument is based on the premise that the \$2,000 annual rental reflected fair market value at the time the grant was issued. Appellant's premise is incorrect because no such determination had been made. 1/ In

1/ Appellant's confusion in this regard may be attributable to the language of the BLM decision which repeatedly refers to a "reappraisal" of the right-of-way, and states, "This right-of-way has been reappraised at \$6,000 for a

Mountain States Telephone & Telegraph Co., 79 IBLA 5, 7 (1984), we referred to BLM's practice of allowing use of rights-of-way prior to a formal appraisal of fair market value, noting that "a right-of-way applicant obtains a distinct advantage, in that use of the right-of-way does not have to be deferred pending BLM's accomplishment of an appraisal."

[1] Under 43 U.S.C. § 1764(g) (1982), appellant is required to pay annually in advance rental for the fair market value of his right-of-way when this value is established by an appraisal. See Mountain States Telephone & Telegraph Co., *supra*. The general standard for reviewing rights-of-way appraisals is to uphold the appraisal if an appellant fails to show error in the appraisal methods used by BLM or fails to show by convincing evidence that the charges are excessive. Donald R. Clarke, 70 IBLA 39 (1983); Francis H. Gifford, 62 IBLA 393 (1982); Dwight L. Zundel, 55 IBLA 218 (1981); B & M Service, Inc., 48 IBLA 233 (1980). In the absence of compelling evidence that a BLM appraisal is erroneous, such an appraisal generally may be rebutted only by another appraisal. Dwight L. Zundel, *supra* at 222.

The appraisal report uses the comparable lease method of appraisal to determine fair market value, which is the preferred method for appraising the fair market value of communication sites where there is sufficient comparable rental data. See Mountain States Telephone & Telegraph Co., *supra*. The BLM appraiser considered a number of leases in the vicinity of appellant's right-of-way communication site. After consideration of the differences and similarities between those sites and appellant's right-of-way, the fair market value annual rental for appellant's right-of-way grant was determined. Appellant has shown no error in the appraisal methods used by BLM nor has it provided another appraisal or any evidence that the charges are excessive, particularly in light of the rental rates for other leases in the area.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Edward W. Stuebing
Administrative Judge

fn. 1 (continued)

one year period." We presume that this is incorrect, as the record shows no previous appraisal but, rather confirms that the initial annual rental charge of \$2,000 was merely an estimate used pending the accomplishment of the appraisal.

